Ang Chai Seng v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO J–052–65 OF 1998
NH CHAN, AHMAD FAIRUZ AND HAIDAR JJCA
9 DECEMBER 1999

Criminal Procedure *— Sentence — Plea of guilty — Possession of 81.4g monoacetylmorphine — Appellant sentenced to 18 years' imprisonment and ten strokes under s 39A(2) of Dangerous Drugs Act 1952 — Sentencing principles applied — Whether manifestly excessive and failure to apply right principles*

The appellant was originally charged for trafficking dangerous drugs, to wit 81.4g of monoacetylmorphine, under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'). At the close of the prosecution's case, the learned judge amended the charge to one of possession under s 12(2) and punishable under s 39A(2). The appellant pleaded guilty to the amended charge and was sentenced to 18 years imprisonment from the date of his arrest and 10 strokes. The appellant appealed against his sentence.

Held, dismissing the appeal:

Having regard to the seriousness of the offence of dangerous drugs and the public interest, the sentence imposed was not manifestly excessive to warrant the court's intervention. Further, it must be noted that the legislature thought it fit to increase the punishment for the offences under s 39A(2) of the Act. The legislative exercise denoted the government's concern of the problem of drug abuse in the country and, unless the court took a firm stand in such offences, the whole purpose of the legislature in increasing the punishment under s 39A(2) would be lost (see p 37C–E).

[Bahasa Malaysia summary

Perayu sebelum ini telah dituduh mengedar dadah berbahaya, sebanyak 81.4g monoacetylmorfin, di bawah s 39A(1)(a) Akta Dadah Berbahaya 1952 ('Akta tersebut'). Di penutup kes pendakwa raya, hakim yang arif telah meminda tuduhan tersebut kepada pemilikan di bawah s 12(2) dan membawa hukuman di bawah s 39(2). Perayu telah membuat pengakuan bersalah terhadap tuduhan yang dipinda tersebut dan telah dihukum sehingga 18 tahun penjara daripada tarikh beliau ditangkap dan 10 sebatan rotan. Perayu telah membuat rayuan terhadap hukuman tersebut.

Diputuskan, menolak rayuan tersebut:

Setelah mempertimbangkan seriusnya kesalahan dadah berbahaya dan kepentingan awam, hukuman yang dikenakan tidaklah dengan jelas berlebih-lebihan untuk mewajarkan campur tangan mahkamah. Tambahan pula, perlu ditekankan bahawa badan perundangan berpendapat adalah wajar untuk menambah hukuman bagi kesalahan-kesalahan di bawah s 39A(2) Akta tersebut. Pelaksanaan badan

perundangan menandakan keprihatinan kerajaan terhadap masalah penyalahgunaan dadah di dalam negara dan, kecuali jika mahkamah mengambil pendirian yang tegas terhadap kesalahan-kesalahan sedemikian, segala tujuan badan perundangan di dalam menambahkan lagi hukuman tersebut di bawah s 39A(2) akan lenyap (lihat ms 37C–E).]

Notes

For cases on plea of guilty, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2863–2877.

Cases referred to

Bhandulananda Jayatilake v PP [1982] 1 MLJ 83 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)
PP v Yeoh Eng Khuan [1976] 1 MLJ 238 (refd)
R v Kenneth John Ball 35 Cr App R 164 (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 12(2), 39A(2)(c), 39B(1)(a), 39B(2)

Appeal from: Criminal Case PJ45–20 of 1997 (High Court, Johor Bahru)

Gooi Soon Seng (*Gooi & Azura*) for the appellant.
A Rashid bin Daud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Haidar JCA (delivering judgment of the court): The appellant was originally charged for trafficking of dangerous drugs, to wit, 81.4g of monoacetylmorphine, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') and punishable under s 39B(2) of the Act. The only penalty prescribed by the Act is death. However, at the close of the prosecution case, the learned judge amended the charge to one of possession under s 12(2) and punishable under s 39A(2) of the Act. The appellant pleaded guilty to the amended charge and he was sentenced to 18 years' imprisonment from the date of his arrest, that is, 4 January 1997 and ten strokes.

This appeal is in respect of the sentence only.

Under s 39A(2) of the Act, the punishment is imprisonment for life or for a term which shall not be less than five years and shall also be punished with whipping of not less than ten strokes. In so far as the punishment on the strokes is concerned, the appellant got the minimum strokes and we would therefore only consider whether the sentence of 18 years' imprisonment was manifestly excessive so as to warrant our interference.

The power of sentencing is a discretionary one and it has been a firmly established principle that an appellate court would be slow to disturb the sentence imposed by the lower courts unless the sentence is excessive to such an extent as to satisfy this court that when it was passed there was a

failure to apply the right principles then this court will intervene (*R v Kenneth John Ball* 35 Cr App R 164). According to Hashim Yeop Sani J (as he then was) in *PP v Loo Choon Fatt* [1976] 2 MLJ 256 at p 257G: 'It is a firmly established practice that the court will not alter a sentence merely because it might have passed a different sentence'.

The learned judge in his grounds of judgment applied the correct principle in the assessment of the sentence (see pp 125–127 of the appeal record). He was of the view that an offence under the Act is a serious offence and went on further to say that the amount of dangerous drugs in this case exceeds 15 times the minimum weight of 5g as provided under s 39A(2)(c) of the Act. We agree that the appellant committed a serious offence and the mitigating factors far outweighed in favour of the public interest. The sentence imposed may appear to be excessive having regard to the maximum sentence of 20 years imprisonment prescribed by the Act but in our view the sentence, having regard to the seriousness of the offence of dangerous drugs and the public interest as opposed to the appellant's interest, is not manifestly excessive to warrant our intervention.

It has to be noted that the legislature had thought it fit to increase the punishment for offences under s 39A(2) of the Act from a maximum of 14 years' imprisonment to life imprisonment and the minimum term of imprisonment from three years to five years and the minimum strokes increased from six to ten strokes. The legislative exercise therefore denotes the government's concern of the problem of drug abuse in this country 'the degenerating effect of the misuse of dangerous drugs and the attendant dangers it has posed to society itself' per Hashim Yeop Sani J (as he then was) in *PP v Loo Choon Fatt*. Unless the courts take a firm stand in such offences the whole purpose of the legislature in increasing the punishment under s 39A(2) of the Act would be lost (*PP v Yeoh Eng Khuan* [1976] 1 MLJ 238).

We would reiterate what the Federal Court said in *Bhandulananda Jayatilake v PP* [1982] 1 MLJ 83 (at p 84A):

> ... this court has said it again and again that it will not normally interfere with sentences, and the probability or even the possibility, that another court would have imposed a different sentence is not sufficient, per se, to warrant this court's interference.
>
> For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorized or extraneous or irrelevant exercise of discretion.

We were satisfied that the learned judge applied the right principles in the assessment of the sentence and correctly exercised his discretion. In the circumstances there were no grounds for us to intervene in the sentence imposed.

The appeal against the sentence was accordingly dismissed.

Appeal dismissed.

Reported by Chin En Tek